

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Harry D. Leinenweber	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	11 C 3273	DATE	4/20/2012
CASE TITLE	Aviation Sales, LLC vs. Esperanza Aviation		

DOCKET ENTRY TEXT

Plaintiff's motion for summary judgment is GRANTED.

■ [For further details see text below.]

Notices mailed by Judicial staff.
Mailed AO 450 form.

STATEMENT

Plaintiff in this case filed a motion for summary judgment on November 23, 2011. On December 15, the Court set a briefing schedule directing Defendant to respond to the motion by February 7, 2012. No response was filed on time, or even subsequent to Plaintiff's reply, which noted Defendant's failure to respond.

Accordingly, the Court takes as true all statements of fact filed in Plaintiff's motion and grants summary judgment for Plaintiff on the breach of contract and conversion counts. The Court also finds that due to the defendant's insolvency, the requested specific performance remedy is warranted. Accordingly, the Court grants Plaintiff's request to retain the entirety of all future monthly payments from Aloha Airlines unless there is a further agreement between the parties or repurchase of the loan by Defendant under the terms of the contract. It also enjoins Defendant from redirecting any such future payment unless further agreement is reached between the parties or the Court so orders.

The Court awards damages in the amount of \$85,000 for the diverted payment of May, 2011 and \$25,000 for each month that Plaintiff subsequently shared revenues with Defendant pursuant to the agreement in Docket Entry No. 29. As of Plaintiff's reply filing, revenue had been shared for eight months, June, 2011 through January, 2012, representing \$200,000. When combined with the diverted May, 2011 payment, that totals \$285,000. Interest on this amount, at a commercially reasonable rate, is also granted, subject to approval by the Court.

Since the Court is uncertain if revenue for the months after January were shared-revenue months, Plaintiff may file another motion for the subsequent shared months and, barring opposition from Defendant, will be added to the amounts due.